



Our country is now faced with an unprecedented situation with regard to the COVID-19 (coronavirus) and the way it affects businesses. A key issue in this situation is deciding what to do about employees should the need for a reduction in workforce or a reduction of hours occur.

In considering a workforce reduction, you must decide if it is going to be **temporary** or **permanent**. If it is temporary, you might consider a **furlough**. A furlough is an unpaid leave for a specific period of time, with the expectation of returning to the job (the term “furlough” has a softer implied meaning than “layoff” although, technically, this would be a “temporary layoff”). Many companies are using this option and then giving furloughed employees the choice of using accumulated PTO or vacation.

If the reduction is to be permanent, or if the period of time is uncertain, then you begin to think in terms of a **layoff**. A layoff does not imply any kind of fault on the part of the employee and usually occurs for lack of work, plant shutdown or relocation, or other economic reasons.

There are two kinds of layoffs.

- The first is a **temporary layoff** which is expected to last for a short period of time, after which the employee is expected to be recalled. This is very similar to the “furlough” mentioned above.
- The second is a **permanent layoff** which does not carry an expectation of recall.

Laid off employees are usually given their accumulated PTO or vacation pay and are eligible for unemployment compensation.

- Additional requirements: A [WARN notice](#) is required when a business with 100 or more full-time workers is laying off at least 50 people at a single site of employment within a 30 day period of time. Laying off less than 50 employees does not require a WARN notice.
- Various states have the additional regulations of **mini-WARN** notice requirements for smaller companies. (California, Illinois, Maryland, New Jersey, New York, Tennessee and Wisconsin).

The rules for selecting those to be laid off are different for **non-union workers** and **union workers**.

- Union workers almost always are selected for layoff based on seniority. However, only 10% of American workers are union members so this will not apply to most employers. If, however, your workforce is unionized, you must abide by the union contract, when laying off employees.
- Non-union employers are not required to layoff based on seniority, although that is one criterion you could choose to use. Most employers would select the least productive employees or those who do not have the skills necessary for the position.

In either case, thoroughly document the reasons that you choose these employees for layoff.

COBRA CONSIDERATIONS

Employers and plan administrators often have little time to prepare for sudden emergency situations, especially in the case of this pandemic.

- Deadlines for terminating coverage may require some flexibility or extensions due to quarantines and impaired access to the plan administrators. Consider giving affected individuals more time to respond to notices or elect/pay for coverage.
- Assess those who may be affected by the pandemic and eligibility for any plan relief.
- An employer might subsidize the cost of COBRA coverage for a certain period of time in compliance with applicable insurance regulations.
- Time period limits due to the pandemic should be communicated to plan participants so they can make appropriate coverage decisions.
- Plan administrators also need to communicate with benefit providers and insurers so they are aware and align with any agreement of government relief.
- Plan administrators should carefully consider the language in their open enrollment materials to explain how any relief provided to victims of coronavirus might impact a COBRA election decision.
- Bring the plan into documentary compliance with applicable regulations. In the form of a separate appendix or “add on” document.

If you would like to receive our packet which contains sample reduction in hours/furlough/layoff information please email us at admin@seay.us. We appreciate having you as a valued client of our firm.

The Seay Management Team

It is our goal to:

1. Help ensure that your business is in compliance with all of the state and federal employment regulations and guidelines which affect your company and your employees;
2. Help eliminate your financial exposure in these areas; and
3. Develop the policies and systems which will help you employ and maintain a satisfied, happy and productive work force.

Seay Management provides Human Resources Management and Labor Relations consulting services. Seay Management does not provide legal advice and does not engage in the practice of law. If you need an attorney, we'll be glad to recommend one to you



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